

Rules of Procedure

Client Security Fund Matters

(Rules Adopted December 21, 1985; Revised December 10, 1994
Effective December 10, 1994.)

Published by the Office of the Secretary
of the State Bar of California

Pub. No. 191-101-3k

January 1995

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RULES OF PROCEDURE

CLIENT SECURITY FUND MATTERS

RULE 1. SCOPE AND PURPOSE OF THE CLIENT SECURITY FUND AND OF THESE RULES

These rules apply to proceedings conducted upon applications for reimbursement from the Client Security Fund of the State Bar of California established pursuant to section 6140.5, Business and Professions Code.

The Client Security Fund of the State Bar of California has been established in recognition by the Board of Governors that the practice of the law is not a commercial enterprise but an essential public profession devoted to serving the public under rules and regulations designed to provide honest representation in all matters. The spirit of public service is one which does and should motivate the profession of the law. It is recognized that, occasionally, a member of the State Bar of California engages in dishonest conduct, in violation of the provisions of the State Bar Act and that such conduct may result in losses to clients or members of the public to whom the lawyer owed a fiduciary duty. Although, in such event, disciplinary proceedings are instituted by the State Bar against the dishonest lawyer leading to disbarment or other discipline and although criminal or civil proceedings are also available remedies in such situations; nevertheless, the State Bar of California has determined that, as part of its public service in addition to its disciplinary procedures, it should also make a voluntary effort to alleviate, insofar as it deems practicable, injury to persons standing in a client or fiduciary relationship and who sustain pecuniary or property loss as the result of dishonest conduct of an active member of the State Bar. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 2. GENERAL GROUND FOR REIMBURSEMENT FROM THE FUND

Except for the further limits contained in the rules which follow, in order to qualify for reimbursement from the Client Security Fund an applicant must establish loss of money or property which came into the hands of an active member of the State Bar while acting as a lawyer, trustee or fiduciary as defined in these rules and which loss was caused by the dishonest conduct of that active member of the State Bar occurring on or after March 4, 1972.

Any payments from the Fund shall be discretionary and shall be subject to these rules and such other regulations and conditions as the Board shall prescribe. The Board or any body designated by the Board to act upon applications for reimbursement from the Client Security Fund may limit or deny an application for reimbursement when it is necessary to do so in order to fulfill the purposes of said Fund. Without limiting the foregoing, reimbursement may be denied, in whole or in part, if any of the following circumstances are present:

- (a) The lawyer and applicant participated, or intended to participate, in any illegal or tortious conduct related to the subject matter of the application;
- (b) The applicant has failed to act reasonably to protect himself, herself or itself against loss considering the circumstances of the transaction, the course of past dealings

between the applicant and lawyer, and their respective educational backgrounds and business sophistication;

- (c) Given the nature of the applicant's loss, its amount, or the financial or administrative circumstances of the Fund, it is necessary that reimbursement be limited or denied;
- (d) Applicant is a fictitious person.

All payments from the Fund shall be a matter of grace and not of right and shall be in the sole discretion of the State Bar of California. No client or member of the public shall have any right in the Fund as a creditor, third party beneficiary, or otherwise. Throughout these rules, the term "Fund" shall refer to the Client Security Fund of the State Bar of California. The term "State Bar" shall refer to the State Bar of California. The term "applicant" shall apply to a person or entity seeking reimbursement from the Fund. The term "lawyer" shall refer to an individual with respect to whose alleged conduct, while an active member of the State Bar, an applicant seeks reimbursement from the Fund. The term "Board" shall refer to the Board of Governors of the State Bar of California. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 3. WHEN APPLICATION SHALL BE FILED

Applications for reimbursement from the Fund shall be filed within four years after the applicant discovers, or through the use of reasonable diligence, should have discovered the loss. (Adopted December 12, 1987, effective January 1, 1988; amended August 24, 1991, effective January 1, 1992.)

RULE 4. LIMITATION ON AMOUNT OF REIMBURSEMENT

- (a) No payment from the Fund shall be made which exceeds the amount set forth in paragraph (c) of this rule to any applicant suffering loss as the result of the dishonest act or acts, or course of dishonest acts, as defined by rule 6, of any one or more lawyers, while acting within the meaning of rule 9(a). There shall be only one maximum payment allowed regardless of the number of losses suffered during the course of any one engagement for services, or related dealings between the parties. Applications filed by a husband and wife shall be regarded as having been made by one person.
- (b) The amount of an applicant's non-monetary loss shall be deemed to be its fair market value at the time of loss.
- (c) For losses occurring on or after March 4, 1972 but before January 1, 1982, the maximum allowable payment is \$25,000. For losses occurring after January 1, 1982, the maximum allowable payment is \$50,000. Cumulative reimbursement payments to an Applicant shall not exceed \$50,000.00 with respect to any individual lawyer. (Adopted January 1, 1986; Amended July 25, 1987, effective August 24, 1987; Amended August 24, 1991, effective January 1, 1992.)

RULE 5. LIMITATION ON REIMBURSEMENT FOR INTEREST OR INCIDENTAL EXPENSES; LAWYER REPAYMENTS TO THE FUND

- (a) No payment from the Fund shall be made for interest on or consequential damages resulting from any reimbursable loss. Reimbursement from the Fund may be made upon clear and convincing proof that an applicant expended reasonable costs, including a reasonable attorney fee, to recover or reduce the amount of the dishonestly caused loss; and that the proof submitted by the applicant shows clearly and convincingly that, but for the reasonable expenses incurred by the applicant, the Fund would have been subjected to a reimbursable claim in excess of the sum of the net reimbursable loss plus reasonable costs spent by the applicant.
- (b) A lawyer shall reimburse the Fund for all moneys paid out as a result of his or her conduct, with interest, and an assessment of the procedural costs of processing the claims. Interest payable shall be simple interest at a rate set by the Commission or Board from time to time, not to exceed the maximum legal rate. Processing costs shall be assessed by the Commission or Board for the sum of the estimated average expenses, including interdepartmental transfers, of processing reimbursement requests of the category involved for the most recent calendar year for which data is available. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 6. DEFINITION OF DISHONEST CONDUCT

As used in these rules, "dishonest act" or "dishonest conduct" means any of the following:

- (a) Wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money or property.
- (b) Refusal to refund an advance fee when the lawyer performed no work whatever, or such an insignificant portion of the services that he or she agreed to perform, such that the lawyer can be regarded at the time payment was received as having lacked the intention of performing the work. All other instances of a lawyer failing to return an unearned fee or the disputed portion of a fee are outside the scope of the Fund.
- (c) The borrowing of money from a client without the intention, reasonable ability, or reasonably anticipated ability to repay it.
- (d) Obtaining money or property from a client representing that it was to be used for investment purposes when no such investment was made. The failure of an investment to perform as represented to, or anticipated by, the applicant is outside the scope of the Fund.
- (e) A lawyer's act of intentional dishonesty or deceit which proximately leads to the loss of money or property, by a person with whom the lawyer held an attorney-client or fiduciary relationship. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 7. EXCLUDED APPLICANTS

The following applicants who have, or previously had, any of the following relationships with the lawyer shall be excluded from receiving reimbursement from the Fund:

- (a) The spouse, child, parent, grandchild, grandparent, sibling, including relationships by adoption, and a person sharing living quarters with a lawyer;
- (b) partner, associate or employer or employee of the lawyer;
- (c) an insurer, surety, or bonding agency or company which seeks reimbursement for payment made under an insurance or surety contract or bond covering the risk involved in the lawyer's dishonest conduct;
- (d) any business entity controlled by (1) the lawyer, (2) any person described in paragraph (a) or (b) hereof, or (3) any entity either described in paragraph (c) hereof or in turn controlled by the lawyer or a person or entity described in paragraphs (a), (b) or (c) hereof;
- (e) an assignee, lienholder, or creditor of the applicant or lawyer; or
- (f) a governmental entity or agency. (Adopted January 1, 1986; Amended July 25, 1987, effective August 1, 1987; Amended August 24, 1991, effective January 1, 1992.)

RULE 8. EXCLUSION FOR LOSS COVERED BY INSURANCE OR FIDELITY OR SIMILAR BOND OR FUND

The Fund shall not reimburse a loss if the reimbursable portion thereof was covered by any insurance or by any fidelity or similar bond or benefit, whether of the lawyer or the applicant or otherwise. This exclusion shall not apply if the insurer or administrator of any bond or benefit possesses a cause of action against the applicant for recovery of the sums paid by such insurance, bond, or benefit. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 9. REQUIRED STATUS OF LAWYER

- (a) To be considered a reimbursable loss, the lawyer dishonestly causing the loss must have been acting in one of the following capacities:
 - (1) As a lawyer;
 - (2) In a fiduciary capacity customary to the practice of law, such as administrator, executor, trustee of an express trust, guardian or conservator; or
 - (3) As an escrow holder or other fiduciary, having been designated as such by a client in the matter in which the loss arose.
- (b) To be considered eligible for reimbursement, one of the following events must have occurred:
 - (1) The lawyer:
 - (a) died or was adjudicated mentally incompetent;
 - (b) was disciplined, or voluntarily resigned from the practice of law in California;

(c) became a judgment debtor of the applicant in a contested proceeding, or was judged guilty of a crime, which judgment or judgments shall have been predicated upon dishonest conduct while acting as specified in paragraph (a) of this rule and which judgment or judgments remain unsatisfied in whole or in part; or

(2) The Commission exercised discretion to waive the requirements of paragraph (b)(1) of this rule. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 10. ATTORNEY-CLIENT RELATIONSHIP; EXCLUSION OF CERTAIN LOAN AND INVESTMENT TRANSACTIONS

If the subject of the application for reimbursement from the Fund is a loss occasioned by a transaction proposed by a lawyer as a loan or investment with, or through, him or her, such loss will not be reimbursable unless it arose out of and in the course of the attorney-client relationship; and but for the fact that the dishonest lawyer enjoyed an attorney-client relationship with the applicant, such loss could not have occurred. In considering whether that standard has been met, the following factors will be considered:

- (a) The disparity in bargaining power between the lawyer and the applicant and their respective educational backgrounds and business sophistication.
- (b) The extent to which the fact that there was an attorney-client relationship overcame the normal prudence of the applicant.
- (c) The extent to which the lawyer, by virtue of the attorney-client relationship with the applicant, became privy to information as to the applicant's financial affairs. It is significant if the lawyer knew of the fact that the applicant had available assets or was expecting to receive assets which were ultimately wrongfully converted by lawyer.
- (d) Whether a principal part of the transaction arose out of a relationship requiring a license to practice law in the State of California as opposed to one that did not. In making this evaluation, consideration will be given to (1) whether the transaction originated with the lawyer or not; (2) the reputation of the lawyer in the vicinage of his or her practice as to the scope and nature of his or her practice and/or business involvements; (3) the amount of the charge made for legal services, if any, and that for a finder's fee, if any, and (4) the number of prior transactions of either a similar or different nature in which the client participated, either with the lawyer involved or any other lawyer, person or business organization.
- (e) The extent to which the lawyer failed to make full disclosure to the applicant in compliance with the Rules of Professional Conduct, including disclosure of the lawyer's financial condition and his or her intended use of the money or property. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 11. CREATION OF CLIENT SECURITY FUND COMMISSION

The Board hereby creates a Client Security Fund Commission (referred to in these rules as the "Commission") to act as the Board's delegate to administer the Fund and these rules. Except as provided herein, or as may be otherwise provided by the Board, In addition to its other duties, the Commission shall have the final authority to determine applications before the Fund, including, without limitation, the authority to interpret and apply the provisions of these rules. The State Bar shall provide an active member as Director and necessary additional active members, who with the Director shall be referred to in these rules as "counsel", to represent the interests of the Fund and of the Commission. It shall also provide other support staff as necessary and appropriate to assist the Commission in carrying out the provisions of these rules. (Adopted January 1, 1986; Amended July 25, 1987, effective August 1, 1987; Amended August 24, 1991, effective January 1, 1992.)

RULE 12. COMPOSITION OF COMMISSION AND TERMS; REIMBURSEMENT OF EXPENSES OF THE FUND

The Commission shall be composed of seven (7) persons, not more than four of whom shall be present or former members of the State Bar or have been admitted to practice before any court in the United States. Members of the Commission shall be appointed by the Board and shall serve at the pleasure of the Board or until the expiration of such terms as the Board may set, whichever first occurs. The reasonable expenses of the Commission including salaries and other costs of counsel and support staff engaged in the representation of or support of the Fund or Commission and including all costs of administration of the Fund and of litigation and review of all claims concerning the Fund shall be reasonable and necessary expenses which may be charged against the Fund pursuant to Business and Professions Code section 6140.5. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 13. APPLICATION FOR REIMBURSEMENT

- (a) The Commission shall prepare or approve a form of application for reimbursement.
- (b) The form shall be executed under penalty of perjury as set forth in section 2015.5 of the Code of Civil Procedure, or in compliance with sections 2013 or 2014 of the Code of Civil Procedure, where applicable, and shall require, as minimum information:
 - (1) The name and address of the lawyer.
 - (2) The amount of the alleged loss.
 - (3) The date or period of time during which the alleged loss was incurred.
 - (4) The date upon which the alleged loss was discovered.
 - (5) Name, address and telephone number of the applicant, together with a statement that the applicant agrees to furnish promptly to the Commission notice of any change of name or address.

- (6) A general statement of facts relative to the application.
- (7) A statement that the applicant agrees to cooperate with the State Bar in reference to these proceedings, disciplinary proceedings or civil actions which may be brought in the name of the State Bar pursuant to a subrogation and assignment clause which shall also be contained within the application.
- (8) A statement that the applicant has read these rules and agrees to be bound by them.
- (9) A statement that the loss was not covered by any insurance, indemnity or bond, or if so covered the name and address of the insurance or bonding company, if known, and the extent of such coverage and the amount of payment, if any, made.
- (c) The form or application shall contain the following statement in bold type:

"THE STATE BAR OF CALIFORNIA HAS NO LEGAL RESPONSIBILITY FOR THE ACTS OF INDIVIDUAL LAWYERS. PAYMENTS FROM THE CLIENT SECURITY FUND SHALL BE MADE IN THE SOLE DISCRETION OF THE STATE BAR OF CALIFORNIA. THE APPLICANT ACKNOWLEDGES THAT BY APPLYING TO THE CLIENT SECURITY FUND, THE APPLICANT MAY BE GIVING UP THE RIGHT TO PURSUE A CIVIL ACTION, FOR THE SAME RECOVERY AGAINST A THIRD PARTY." (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 14. SCREENING OF APPLICATIONS BY COUNSEL; TRANSMITTAL AND SERVICE OF TENTATIVE DECISION ON APPLICANT AND LAWYER

- (a) An application for reimbursement from the Fund shall be filed with the Commission at the San Francisco or Los Angeles Office of the State Bar.
- (b) Upon filing, counsel shall screen or direct the screening of each application for reimbursement. Counsel may refer the application to State Bar Offices under the direction of the Chief Trial Counsel in connection with a pending disciplinary matter.
- (c) Upon completion of screening and any appropriate investigation by counsel, the Commission shall tentatively decide the action which shall be taken on the application including the holding of an oral hearing, or designating one or more Commission members or counsel to serve as a fact-finding panel. A panel composed of less than a quorum of Commission members shall report its findings to the full Commission for consideration in reaching its tentative decision. Such tentative decision shall include such proposed findings or reasons as are necessary to permit adequate review by the applicant, and the lawyer. The Commission's tentative decision shall be served on the applicant and the lawyer and the applicant and the lawyer shall each be given a period of thirty (30) days to file with the Commission's counsel and serve upon the other party any objections to that proposed recommendation. An objection of a party to the tentative decision shall be in writing, shall state the precise legal and/or factual grounds on which it is based and may include a request supported by written reasons for an oral hearing.

In lieu of such oral hearing, a party may submit for the Commission's consideration or the Commission may require from a party in support of any asserted factual basis for objection one or more declarations under penalty of perjury as set forth in section 2015.5 of the Code of Civil Procedure. (Adopted January 1, 1986; Amended July 25, 1987, effective August 1, 1987; Amended August 24, 1991, effective January 1, 1992.)

RULE 15. CONSIDERATION BY COMMISSION OF OBJECTION TO TENTATIVE DECISION; FINAL ACTION BY COMMISSION

- (a) After opportunity has been given to the applicant or the lawyer pursuant to rule 14(c) to object to the tentative decision of the Commission, and to timely submit such declarations under penalty of perjury in support of factual contentions as may be requested or desired, the Commission shall take final action on the application.
- (b) The Commission may take whatever action it deems appropriate based on the application, declarations under penalty of perjury, if any, submitted in support of or in opposition to the application and other relevant evidence in the administrative record. The final action of the Commission may include a written direction of reimbursement from the Fund, a written direction denying reimbursement from the Fund or oral hearing if the Commission concludes that such hearing is reasonably necessary to permit an appropriate decision to be made on the application. If the Commission's final decision is for reimbursement or for denial of reimbursement, such order may be made with or without prejudice to the applicant presenting a further application upon the occurrence of one or more conditions.
- (c) The final decision of the Commission shall be served on the lawyer and applicant and shall constitute the final action of the State Bar.
- (d) The Commission shall have the sole and final authority to determine whether and to what extent any application for reimbursement shall be granted and shall determine the order, manner (which may be in installments) and amount of payment of each application. The Commission may postpone consideration of any application until after any disciplinary action or any pending or contemplated court proceeding has been completed.
- (e) Before the Commission directs that payment from the Fund be made, it must find that a reimbursable loss as defined in these rules has been established and the extent of said loss, based upon a preponderance of the evidence.
- (f) Action of the Commission may be taken either at a meeting of the Commission or by a poll of members of the Commission if such poll has been authorized by the Commission or its chair. The concurring vote of a majority of the members of the Commission then in office shall be the action of the Commission in a duly authorized poll of its members. In other cases, the vote of a majority of the members of the Commission present and voting when a vote is taken shall constitute the action of the Commission. (Adopted January 1, 1986; Amended July 25, 1987, effective August 1, 1987; Amended August 24, 1991, effective January 1, 1992.)

RULE 15.5 SERVICE OF DECISIONS

- (a) Service of the tentative decision and final decision shall be made by mail in a sealed envelope, with first-class postage paid:
 - (1) To the applicant, and any attorney representing him or her before the Commission, at their respective last known addresses;
 - (2) To the respondent lawyer at the address listed in the official membership records of the State Bar. Also to any attorney representing the respondent lawyer at his or her last known address.
- (b) If the respondent is deceased, no service need be made on the respondent of either the tentative decision or the final decision. (Adopted July 23, 1988, effective July 22, 1988.)
- (c) If no service has been made of the tentative decision on the respondent because the respondent is deceased, the applicant may waive the time to file an objection by submitting a waiver in writing. Upon receipt of the waiver, a final decision will be entered. (Adopted July 23, 1988, effective July 22, 1988; Amended August 24, 1991, effective January 1, 1992.)

RULE 16. PROCEDURAL RULES FOR CONSIDERATION OF APPLICATIONS BY THE COMMISSION

(a) In general.

Upon consideration of applications for reimbursement, the Commission may:

- (1) Take and hear evidence pertaining to the application.
- (2) Administer oaths and affirmations.
- (3) Compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the application. Any subpoena duces tecum may provide that the books, papers or other documents be produced at an administrative office of the State Bar in care of the director or his or her delegates. Upon the refusal of a party to obey a subpoena directed to it, the contempt procedures of rule 322, Rules of Procedure of the State Bar shall apply.

(b) Consolidation and Bifurcation.

- (1) When two or more applications involve the same lawyer or lawyers the Commission may order the applications consolidated if no substantial rights will be prejudiced.
- (2) When an application involves more than one lawyer, the Commission may order the bifurcation of proceedings with respect to each individual lawyer if no substantial rights will be prejudiced.
- (c) Evidence Proceedings had upon applications need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence under oath shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any com-

mon law or statutory rule which might make improper the admission of such evidence over objection in court proceedings. The applicant shall have the duty to supply relevant evidence under oath to support the application and the lawyer shall have the duty to supply relevant evidence under oath to support factually based objections to the application.

(d) Client Security Fund Hearings.

Hearings at which testimony is presented before the Commission or a **fact-finding panel** may be recorded by a certified shorthand reporter or by electronic equipment and methods approved by the Board of Governors as directed by the Commission. The transcript of all or a portion of such proceedings shall be prepared upon direction of the Commission. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 17. REVIEW OF FINAL DECISION OF THE COMMISSION

The final decision of the Commission to grant or deny reimbursement to an applicant may be reviewed by the applicant or the respondent lawyer in the superior courts of the state pursuant to the provisions of section 1094.5 of the Code of Civil Procedure. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 18. ATTORNEY FEES

Since the purpose of the Fund is to relieve or mitigate an applicant's losses caused by an active member's dishonest conduct, members of the State Bar are encouraged to represent applicants in matters affecting the Fund on a pro bono publico basis whenever possible in order to maximize the benefits available to the members of the public who might have suffered a loss which the Fund was designed to reimburse. Nevertheless, a member of the State Bar who represents an applicant in pursuing an application before the Commission may contract with the applicant for an attorney fee. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 19. ASSIGNMENT OF APPLICANT'S RIGHTS AND SUBROGATION

Payments on approved applications shall be made from the Fund only upon condition that the State Bar of California receives, in consideration for any payment from the Fund, a pro tanto assignment from the applicant of the applicant's rights against the lawyer involved and against any third party or entity concerning the dishonestly caused loss for which the applicant is receiving reimbursement from the Fund. The collection of the aforementioned assignment shall be handled by the Office of The General Counsel of the State Bar under the supervision of the Board of Governors or in such other manner as may from time to time be directed by the Board of Governors. In order to effect collection of said assignment, general counsel may disclose such information concerning the application and the consideration thereof by the State Bar as in general counsel's discretion is necessary and general counsel may disclose matters otherwise confidential under these rules as deemed required by general counsel in filing or responding to any pleading or contention. Upon commencement

of an action by the State Bar of California, pursuant to its subrogation rights, and within the time limits provided by Business and Professions Code section 6140.5(b), it shall give written notice thereof to the applicant at his last known address. (Adopted January 1, 1986; Amended August 24, 1991, effective January 1, 1992.)

RULE 20. PUBLIC ACCESS TO FUND RECORDS AND PROCEEDINGS; ACCESS TO STATE BAR DISCIPLINARY FILES AND RECORDS

- (a) All applications for reimbursement to the Client Security Fund are confidential, unless formal disciplinary charges have been filed with the State Bar Court based upon the same facts as the application for reimbursement. In those cases where such formal disciplinary charges have been filed, the application for reimbursement, and the tentative and final decisions of the Commission or of the State Bar Court on such an application, as well as any brief or pleading filed by any party to a fund proceeding shall be available for public inspection during State Bar office hours at the office of the State Bar where those records are maintained. Copies may be made only at the expense of the person requesting them. The Commission may establish and charge a reasonable fee for such copies.
- (b) All hearings on Fund applications shall be confidential unless formal disciplinary charges have been filed with the State Bar Court, based upon the same facts as the application for reimbursement. In those matters where such formal disciplinary charges have been filed, any hearing is open to the public.
- (c) Notwithstanding the provisions of paragraphs (a) and (b), in any case where reimbursement is directed, in the interest of public protection, the following information shall be a matter of public record:
 - i. the name of the lawyer,
 - ii. the name of the applicant,
 - iii. the amount of reimbursement; and
 - iv. the date of reimbursement.

If no formal disciplinary charge has been filed against the lawyer with the State Bar Court based upon the same facts as the application for reimbursement, that information shall also be part of the public record.

- (d) Notwithstanding the provisions of this rule, all aspects of the deliberations of the Commission on applications for reimbursement shall be confidential as shall all reports or memoranda prepared by or for counsel concerning the investigation of an application or which would be considered as "attorney work product," except that the State Bar offices under the direction of the Chief Trial Counsel may have access to any of said records which bear on investigation or prosecution of an attorney disciplinary matter.
- (e) The Commission, and its counsel during consideration of an application may have access to State Bar disciplinary files and records which have not become public. All consideration of such confidential disciplinary files and records shall be confidential and in camera and no member of the public may have access to such confidential disciplinary files and records, unless the Board of Governors of the State Bar shall have first so ordered.

(Adopted January 1, 1986; Amended July 25, 1987, effective August 1, 1987; Amended August 24, 1991, effective January 1, 1992.)

RULE 25. TRANSITIONAL RULE

These rules shall apply to any application for reimbursement submitted to the State Bar on or after January 1, 1986, or which are pending on or after November 1, 1987, except for those applications which have been set for hearing before the State Bar Court or for consideration by the Review Department under rules 670 et seq. of the Rules of Procedure of the State Bar of California. Any applicant whose claim has been denied in whole or in part under rules 670 et seq. after July 25, 1985, may seek reconsideration by the Commission under these rules. (Adopted January 1, 1986; Amended October 24, 1987).

RULE 30. AUTHORITY TO WAIVE BAR TO REIMBURSEMENT

In the interest of justice, for good cause shown, the Commission may waive any requirement set forth in these rules which would bar reimbursement on a claim that would otherwise qualify for reimbursement. (Adopted July 25, 1987, effective August 1, 1987.)

RULE 40. IMPLEMENTATION OF PILOT PROJECTS BY THE COMMISSION

The Commission may implement pilot projects to expedite the processing of applications. The Commission shall establish written standards and procedures for such pilot projects which may not exceed 18 months in duration. At the beginning of each project, quarterly while each project is underway, and at or before the conclusion of each project the Commission shall provide a written report to the Board on the nature of the pilot project, its effect on the processing time and costs of administration, and whether the Commission recommends that the procedures of the pilot project be made a part of the Rules of Procedure, Client Security Fund Matters. (Adopted May 13, 1989; Amended December 10, 1994.)

RULE 41. NOTICE OF INTENTION TO PAY PROCEDURE

The Director, under standards set by the Commission, is authorized to issue Notices Of Intention To Pay. The Notice shall inform the lawyer of the allegations made by an applicant, and advise the lawyer of the intention to have reimbursement issued to that applicant in a stated amount. This action by the Director may be made provided each of the following conditions is clearly met:

- (a) Receipt of a properly completed application.
- (b) Documentation confirming the amount of loss.
- (c) Sufficient evidence of the eligibility for reimbursement under all other rules of the Commission. For applications requesting \$5,000.00 or less, prima facie evidence shall be sufficient to establish eligibility for reimbursement under the rules.
- (d) The filing of a discipline complaint by the applicant, unless waived by the Director, if the lawyer has not been disbarred or tendered his or her resignation from the State Bar with charges pending.

- The requirements of paragraph (b)(1) of rule 9 are waived.

A Notice of Intention to Pay shall be mailed to the lawyer at his or her membership records address by first class mail. The lawyer shall have 30 days from the date of mailing in which to submit a written objection to payment being made. In that event, processing for issuance of a reimbursement payment shall cease. Further review of the application shall then be conducted in accordance with all other applicable rules of procedure. If the lawyer does not submit a written objection, then the reimbursement amount stated in the notice shall be paid to the applicant.

An applicant may object to the amount of payment provided the applicant submits a written objection within 30 days of the date on which payment is made to him or her. The applicant may accept the reimbursement payment without waiving his or her right to file objections. In such an event, the Commission shall likewise consider the objection and issue a decision. (Adopted December 8, 1990; Amended December 10, 1994.)